



1917

Editorials

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Kentucky Law Journal

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Kentucky Law Journal

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VIRGIL CHAPMAN, Editor-in-Chief. BEN H. SCOTT, Business Manager.
Committee of Kentucky State Bar Association.

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Students

1918

Frank W. Dempsey
M. M. Atchison
C. R. Barker
George Bradley

J. J. McBrayer
Sam Morton
C. P. Mabry
J. P. G. Reynolds

J. S. Sherwood
C. S. Ramsey
A. I. Northcutt
Buford Williams
R. C. Northcutt

1919

Rebekah Paritz

Neville Moore

Neal Sullivan

1920

Mary Adams Talbott

Ed. Dabney

Alex Campbell

Alumnus

Jesse F. Gregory, Owensboro.

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EDITORIAL NOTES.

OUR PURPOSES.

The Kentucky Law Journal, founded by Judge W. T. Lafferty, Dean of the College of Law, made its initial appearance from the University press in January, 1913. An editor and a business manager, selected from the Senior Class, have had entire control of editing and managing the Law Journal each year; and in the hands of these young lawyers, strengthened by the enthusiastic encouragement and sage counsel of Judge Lafferty and Judge Chalkley, this little magazine has grown, month by month, from a dozen pages in 1913 to its present proportions in 1917-18. We realize

that the Law Journal is yet in its infancy, but are determined to devote our best efforts to the end that Volume VI may meet the highest expectation of its readers. In the present volume there will be seven numbers, from December to June, inclusive. In those numbers will be published leading articles on live legal topics by eminent lawyers of Kentucky and other states. They will deal with problems of substantive and adjective law, unraveling the tangled webs of conflicting decisions and elucidating the principles of jurisprudence. Special attention, from both the judicial and the legislative standpoint, will be devoted to the vital, growing questions relating to public utilities and the public service.

As the official organ of the Kentucky State Bar Association, the Kentucky Law Journal will uphold the standards and ideals of justice and advocate the remedial policies of that organization. We dedicate these columns to the bench and bar, with the earnest hope that by devoting ourselves to the accomplishment of the exalted purposes for which the Bar Association and the Law Journal were established we may render a real and lasting service to the State. Above all, we avow our unwavering devotion and pledge our unfaltering support to the principles of constitutional liberty derived from, and secured by, the law in its strength, majesty, wisdom and justice.—V. C.

OF PARAMOUNT IMPORTANCE.

No more important question will face the General Assembly this winter than that of legal education and admission to the bar. Few men fully appreciate the imperative need of wise legislation in regard to this subject, and realize its importance not only to the lawyers and courts, but to all the people of the State. This very problem of who shall practice law in our courts is of vital concern to the general welfare; and upon its solution depends in a large measure the security of the life, liberty and property of the individual citizen.—V. C.

COUNTY APPOINTMENTS UNCONSTITUTIONAL.

An important epoch in the life of the University of Kentucky passed into history with the recent decision by the Court of Appeals in the case of Barker, President, v. Crum, in which the court followed closely the arguments advanced by Judge Henry S. Barker in his brief for the appellants. The long-mooted question involved was the constitutionality of the law by virtue of which certain students selected from the various counties were granted privileges of tuition, room rent, fuel, lights and transportation free of cost, while other similar students were denied these privileges.

The court sustained the claim of the University officials that the statute referred to is in conflict with section 3 of the Bill of Rights of the State Constitution, which provides that " . . . no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services."

In summarily disposing of the contention of the students, appellees, the court held, in substance, as follows:

1. The statute providing that in consideration of the levy of a tax to support the University certain selected students of each county could attend it free of charges, "is a mere legislative avowal, not a contract" between the state and the various counties thereof.

2. Section 184 of the Constitution, authorizing the tax to support the University has nothing to say concerning the apportionment and expenditure of said tax.

3. The class to which the statute in question refers can be "arbitrarily selected" by the county superintendent and is therefore within the prohibition of section 3 of the Constitution.

4. The doctrine of contemporaneous construction cannot be invoked to sustain the validity of a statute against the express mandate of the Constitution.

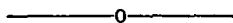
There was no doubt as to the direct prohibition contained in section 3 of the Bill of Rights. The question of construction arose only upon the meaning of "public services," as used therein. The better view seems to be that such "emoluments or privileges" may be granted to those only who shall "by heroic deeds, inventive

genius, or great mental endowments, and a life of public virtue," become public benefactors.

It was not claimed that the students of the University had distinguished themselves by rendering conspicuous public service to the state. These young people have their lives before them, and can point to no wise, brave, arduous or patriotic services of theirs in the past that could entitle them to special privileges not conferred upon thousands of their fellow citizens.

There is not even the semblance of a contract between them and the state (and no legal obligation exists on their part) for services to be rendered *in futuro*; they have not even agreed to remain citizens of Kentucky after their training is completed.

It is clear, therefore, that the statute under consideration confers special privileges in direct contravention of section 3 of the Bill of Rights, and, in the language of Judge Miller, "cannot be upheld, upon any ground, if the Constitution is to remain the paramount law of this Commonwealth."—V. C.



JURISDICTION—MILITARY V. CIVIL.

At this crucial time, when our country presents the appearance of an armed cantonment, questions of martial law and conflicts between the jurisdiction of civil courts and military tribunals are constantly arising. In this connection the recent case *In Re King* is of especial interest to the bench and bar of Kentucky, because the alleged crime was committed in Kentucky, the decision was rendered by Judge Cochran in the United States District Court of the Eastern District of Kentucky, and was secured by Attorney W. C. G. Hobbs, a member of the Kentucky State Bar Association.

A soldier in the National Guard of Kentucky, who had been drafted and sworn into the service of the United States, shot to death a policeman, and was forthwith committed to the civil authorities by the officers of his company. On his being indicted for murder his brigade commander petitioned Judge Cochran for a writ of *habeas corpus*, praying for the release of the prisoner, and trial by court-martial, by virtue of the Articles of War.

The point involved seems never to have decided before, but the

court reviewed some *dicta* on the subject in construing the Articles of War as they stood on the statute books prior to the passage of the act of 1916. It has long been clearly established that the civil courts have priority of jurisdiction over capital offenses committed by soldiers in time of peace, leaving to military authorities only those cases in which a soldier's conduct is prejudicial to military order and discipline. In time of war military authorities have concurrent jurisdiction with civil authorities over crimes committed by soldiers in a loyal state; but "It is clear," said Judge Cochran, "that under the Articles of War as contained in section 1352, U. S. Rev. Stat., the civil authorities in time of war had no right to withhold a soldier accused of a crime from the military authorities." He further states that jurisdiction over crimes committed by soldiers in the enemy's country rests exclusively with the military courts. The law as re-enacted is in no way changed in effect, unless it be to grant the military authorities exclusive jurisdiction in time of war.

The question of military and civil jurisdiction arose in a different way in the recent case of *United States ex rel. Troiani v. Heyburn*, 245 Fed. 360, in which the defendant having been imprisoned by a military tribunal for violation of the draft law petitioned the civil court for a writ of *habeas corpus*, which was denied.

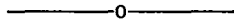
Under the constituted power to declare war and support armies Congress may designate the manner and means of executing that power. Because of questions that are sure to arise in the exercise of this war-making power, Congress may constitute and establish tribunals to settle those questions, and it is natural and right that they should be military tribunals.

The lawful and independent jurisdiction which belongs to other tribunals belongs to them. It is within their power to determine such matters as arise from the administration of the draft law.

While the courts are charged with the duty of safeguarding the rights and liberties of the individual, and the writ of *habeas corpus* is the instrument with which to accomplish that purpose, yet it is for the protection of liberty under the law. "The power of the court to enforce this writ is limited, as is every other pow-

er," says Judge Dickinson, "to its lawful exercise. Untold numbers of persons are restrained of their liberties, to whom the courts can give no relief. It is not a limitation of the power, but in the occasion of its exercise."

The question is as to whether or not the investigation will in effect be an appellate review of what has already been determined by a tribunal of competent jurisdiction. " . . . the writ of *habeas corpus* cannot be made a substitute for a writ of error." The courts prefer not to cross this line "unless the call to do so is imperative, because of want of jurisdiction, usurpation of power, or arbitrary denial of rights."—V. C.



SELECTIVE DRAFT CONSTITUTIONAL.

In the cases of *United States v. Sugar*, 243 Fed. 423, and *Story v. Perkins*, 243 Fed. 997, the "selective draft act" is declared to be within the barriers prescribed by the Federal Constitution. The latter eloquent opinion has received wide publicity, and the former seems to be the most exhaustive judicial opinion yet given on the subject.

The defendants were accused of conspiring to obstruct the operation of the draft law, by procuring the violation of its penal provisions. They moved to quash the indictment on the ground that the law is unconstitutional. The court overruled the motion, holding that the act is comprehended in the power "to raise and support armies," conferred by Art. 1, sec. 8, subdivision 12, of the Constitution; that it did not call out the militia as such, but, in the exercise of the general power to draft all citizens, it drafted the members of the militia into the national army; that compulsory military service is not "involuntary servitude" within the prohibition of the Thirteenth Amendment; that the exemption boards, if courts at all, were military courts established under the power given by Art. 1, sec. 8, of the Constitution "to make rules for the government and regulation of the land and naval forces," and their decisions, like those of other military tribunals, need not be reviewable by the civil courts; and that the act involved no unconstitutional delegations of legislative or judicial powers.

In the Story case the further objection was made and overruled that Congress had no power to compel service outside the United States. This contention was based on the common law right of subjects to "remain within the realm." In his opinion Judge Speer replied to that argument as follows:

" . . . the common law—that is, the immemorial English law—cannot prevail as to the United States or its people against the explicit provisions of an act of Congress. Nor has a court of the United States power to declare an act of Congress invalid because it is inimical to the common law. The touchstone for such judicial power is the Constitution, and nothing else."—V. C.